

Notice of Allowability

Application No.

10/089,831

Examiner

Catherine N. Witczak

Applicant(s)

LEVIN ET AL.

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/10/2007.
2. ☒ The allowed claim(s) is/are 1-40.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

Kevin C. Sirmons

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Art Unit: 3767

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Maurice Klee on 10/23/2007. The application has been amended as follows:

In claim 12, following "(B)" on line 4 of the claim, "while step (A) is being performed," is added.

In claim 12, following "peritoneal cavity" on line 5 of the claim, "while step (A) is being performed" is deleted.

In claim 35, following "(a)" on line 3 of the claim, "determining the volume of fluid in the peritoneal cavity of a subject by" is deleted.

In claim 35, following "calibration constant Kp" on line 4 of the claim, "for use in determining the volume of fluid in the subject's peritoneal cavity" is added.

In claim 36, following "(a)" on line 3 of the claim, "determining the volume of fluid in the peritoneal cavity of a subject by" is deleted.

In claim 36, following "calibration constant Kp" on line 4 of the claim, "for use in determining the volume of fluid in the subject's peritoneal cavity" is added.

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Art Unit: 3767

In claim 38, following “(a) determine” on line 3 of the claim, “the volume of fluid in the peritoneal cavity of a subject by determining” is deleted.

In claim 38, following “calibration constant Kp” on line 4 of the claim, “for use in determining the volume of fluid in the subject’s peritoneal cavity” is added.

In claim 39, following “(a) determine” on line 3 of the claim, “the volume of fluid in the peritoneal cavity of a subject by determining” is deleted.

In claim 39, following “calibration constant Kp” on line 4 of the claim, “for use in determining the volume of fluid in the subject’s peritoneal cavity” is added.

Allowable Subject Matter

2. Claims 1-40 are allowed.

In light of amendments to the claims and Applicant’s arguments regarding the 101/112 issues (see Response 8/10/2007), the 101/112 rejections of the claims has been withdrawn.

As for reasons for allowance, see “Reasons for Allowance” as previously presented in Office Actions dated: 3/22/2005; 9/23/2005; 4/17/2006; and 10/10/2006.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witzak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

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Art Unit: 3767

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

cw



10/28/08

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SUPERVISORY PATENT EXAMINER

